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IN THE  
**Supreme Court of the United States**

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October Term, 1948

No. 233

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JOAN BRODEL (professionally known as Joan Leslie),  
*Petitioner,*

*vs.*

WARNER BROS. PICTURES, INC. (a corporation),  
*Respondent.*

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**BRIEF OF RESPONDENT IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI.**

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Petitioner seeks review by this Honorable Court of a decision rendered by the Supreme Court of the State of California reversing a judgment of the trial court (Superior Court, Los Angeles County), which judgment had dismissed a complaint following an order sustaining a general demurrer thereto without leave to amend.

**Statement of the Case.**

The facts of the case are set forth in the decision of the Supreme Court of the State of California rendered on appeal from the judgment (*Warner Bros. Pictures, Inc., v. Joan Brodel*, 31 A. C. 819, 192 P. (2d) 949 [R. 14-28]). The opinion, describing the manner in which the cause arose, states [Opin. 5th para. R. 15]:

"Basing its cause of action on the foregoing facts alleged in its complaint . . . plaintiff brought

this action for declaratory relief and for an injunction preventing defendant Brodel from performing and the other defendants from causing her to perform dramatic services for anyone except plaintiff. The trial court sustained demurrers interposed by defendants without leave to amend and dismissed the action. Plaintiff appeals."

The facts alleged in the complaint [R. 1-12], to which the general demurrer was interposed [R. 12], show the following situation [Opin. R. 14-15; Complaint, R. 1-12]: Petitioner, then a minor seventeen years of age, executed a written agreement with respondent, as a producer of motion pictures, on March 27, 1942, under which petitioner agreed to perform dramatic services exclusively for the respondent for an aggregate period of approximately seven years, consisting of seven successive fifty-two week periods at increasing rates of salary per year commencing at \$600 per week and reaching the sum of \$2,250 per week. Such contract at the time of its execution was submitted to, and after full hearing was approved by, the Superior Court of Los Angeles County. Petitioner performed under the contract for approximately four years and then, upon reaching the age of majority, purported to disaffirm the contract in its entirety and immediately undertook to contract her services to other producers of motion pictures.

Section 36 of the Civil Code of the State of California, as it read at all times herein relevant, is as follows:

"36. *When Minor May Not Disaffirm.* A minor can not disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them; provided, that these things have been actually furnished to him or to his family.

A minor can not disaffirm a contract, otherwise valid, to perform or render services as actor, actress, or other dramatic services, as participant or player in professional sports, including, but without being limited to, professional boxers, professional wrestlers and professional jockeys, where such contract has been approved by the superior court of the county where such minor resides or is employed. Such approval may be given on the petition of either party to the contract after such reasonable notice to the other party thereto as may be fixed by said court, with opportunity to such other party to appear and be heard." (Calif. Stat. 1941, Chap. 734.)

Said statute was amended by the State Legislature in 1947, after the decision of the lower court and prior to the decision of the Supreme Court of California in this case. Its text appears as a note to the opinion [R. 22].

### Questions Presented.

Petitioner attempts to invoke the jurisdiction of this court as applicable to a "final judgment" under Section 237b of the Judicial Code. The first question for consideration is whether the decision here presented is actually final.

Petitioner, assuming jurisdiction to exist, purports to present three constitutional questions (Pet. 2). The second and third of her questions have no factual foundation, but appear based upon an erroneous assumption that an amended statute was herein applied retroactively. The remaining question attempted to be presented is whether Section 36 of the Civil Code of the State of California contains unreasonable and arbitrary classifications in violation of the equal protection clause of the Fourteenth Amendment.

### Summary of Argument.

Petition for certiorari in the case at bar is opposed for the following reasons:

1. The decision of the Supreme Court of the State of California is neither final nor complete, in that in effect it merely overrules a demurrer to an original complaint.

2. There is no violation of the equal protection clause of the Fourteenth Amendment in that the actual classifications in the statute are reasonable. Petitioner cannot complain that other classes might have been included.

3. The opinion of the Supreme Court of the State of California does not attempt to apply the 1947 amendment of the statute to the contract retroactively, or otherwise.

4. The question presented is not a federal question of substance nor of general public importance.

## ARGUMENT.

### I.

**The Decision of the Supreme Court of the State of California Is Not a Final Judgment Subject to Review by This Honorable Court.**

The jurisdiction of this court to review a state court judgment is confined to one which is final. In *Market Street Railway Company v. Railway Commission of California*, 324 U. S. 548, 65 S. Ct. 770, 89 L. Ed. 1171, such rule is stated, and it is said:

“Final it must be in two senses: It must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court.”

The decision at bar is of a final court, but it clearly does not determine the litigation. The decision of the Supreme Court of the State of California merely reverses a judgment of the trial court dismissing an original complaint following the sustaining of a general demurrer. There has been no trial of the cause and the statement of petitioner (Pet. 5) concerning a “new trial” is entirely misleading. There has been no decision upon the merits by any court. The opinion of the Supreme Court of the State of California itself indicates the possible amendment to the complaint and the necessity of proof before any relief is granted on the complaint [R. 23-24]. In any case, petitioner has the right, now that her demurrer has

been overruled, to answer upon such terms as the trial court may deem just. Such right is given by Section 472a of the Code of Civil Procedure of the State of California, which, so far as is here relevant, provides:

“When the demurrer to a complaint, or to a cross-complaint, is overruled, and there is no answer filed (or entered), the court may, upon such terms as may be just, allow an answer.”

Petitioner states that the present decision (Pet. 5) obviously forecloses her from all defenses she could possibly raise. She thereby confesses she may have no defense on the merits, but such statement is not the equivalent of a confession of judgment in the trial court, nor can she, at her option, convert a pending action into a final judgment by such a statement. The fact remains that petitioner has not yet pleaded or attempted to plead any defense nor confessed judgment, nor has her default been taken, and the action is still pending and still undetermined on its merits.

Petitioner is still entitled to answer and put in issue even the execution or existence of the contract alleged in the complaint, or any other issue of fact or law she may desire (other than whether the present original complaint on its face states a cause of action). Not until that point is reached in the trial court will there be, or can there be, any decision on the merits or any judgment against the petitioner.

It has long been held that decisions with respect to pleadings, particularly with respect to demurrers, are not final judgments reviewable by this Honorable Court.

In *Meagher v. Minnesota Thresher Manufacturing Co.*, 145 U. S. 608, 12 S. Ct. 876, 36 L. Ed. 834, a judgment of the Supreme Court of Minnesota affirming an order of the trial court overruling a demurrer to a petition for sequestration of assets was held not a final judgment. In that case this court stated, after so ruling, in the final sentence of the opinion that,

“This is also true of a judgment merely affirming an interlocutory order, however apparently decisive of the merits.”

Even in cases where the highest court of the state has directed that a demurrer be sustained, instead of being overruled as in the case at bar, this court has held that the judgment was not final. (*Great Western Telegraphic Company v. Burnham*, 162 U. S. 339, 16 S. Ct. 850, 40 L. Ed. 991, and *Clark v. Kansas City*, 172 U. S. 334, 19 S. Ct. 207, 43 L. Ed. 467.)

In *Louisiana Navigation Co. v. Oyster Commission*, 226 U. S. 99, 33 S. Ct. 78, 57 L. Ed. 138, and *Bostwich v. Brinkerhoff*, 106 U. S. 3, 1 S. Ct. 15, 27 L. Ed. 73, the highest state courts had, as here, reversed the judgments of the trial courts sustaining demurrers, and in each case the judgment of the highest state court was held not final for the purpose of review by this Honorable Court. In *Louisiana Navigation Co. v. Oyster Commission*, the assertion was likewise made, as here, that the opinion of the Supreme Court of Louisiana therein practically disposed of the major question. This court nevertheless dismissed the cause for want of jurisdiction and stated that it was set-

tled that this court would not review by piece-meal the action of a state court and that on the question of finality the form of the judgment is controlling.

Petitioner (Pet. 3-7) has cited precedent of general import to the effect that a review by this court is proper if the decision below is in fact final, whether or not so denominated under state practice. Such cases are not here applicable where the decision in question is a mere ruling on a matter of pleading, leaving the case in the trial court with a complaint on file, a demurrer overruled, and no answer or other responsive pleading having yet been presented by petitioner. Clearly at the present time, even though the Supreme Court of the State of California has ruled upon the meaning and constitutionality of the statute involved, nevertheless the stage of proceeding is such that petitioner as defendant could still attempt to show that the statute is not in fact applicable.

No case has been made in the trial court. No judgment exists against petitioner, nor any determination as yet other than that the existing complaint states a cause of action. The specific cases involving demurrers cited herein are, we submit, decisive.

## II.

**It Clearly Appears That Section 36 of the Civil Code of the State of California as It Stood Prior to the Amendment of 1947 Is Proper in All Respects.**

Petitioner generally asserts as her Point I (Pet. Br. 10-22) that the classifications included in the statute are arbitrary and without reasonable foundation.

The statute in its second clause prohibits the disaffirmance by a minor of a contract to render services as either (a) an actor, actress or other dramatic service, or (b) as a participant or player in professional sports. There are two and not three classifications as asserted by petitioner.

Petitioner concedes that these classes have a common characteristic and that such persons so employed must have exceptional skill and talent and that (Pet. Br. 13), "This certainly is a natural and intrinsic element." Her major complaint is that the statute does not also include infant prodigies of other types, such as musicians, scientists and inventors (Pet. Br. 13, 15, 22).

It is well established that any statutory classification is valid if any set of facts can be reasonably conceived which would justify it.

*Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 31 S. Ct. 337, 55 L. Ed. 369;

*Madden v. Kentucky*, 309 U. S. 83, 88, 60 S. Ct. 406, 84 L. Ed. 590;

*Clark v. Paul Gray*, 306 U. S. 583, 59 S. Ct. 744, 83 L. Ed. 1001.

In the *Lindsley* case it is said that the equal protection clause of the Fourteenth Amendment avoids a classification

only when it is without any reasonable basis and is, therefore, purely arbitrary and that,

“When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.”

In *Clark v. Paul Gray, supra*, a traffic regulation case, it is said that the function of a court upon such a question “is only to determine whether it is possible to say that the legislative decision is without rational basis.”

Since petitioner herself asserts that the actual classifications under the statute, to-wit: minors rendering dramatic services and those engaged in professional sports, involve a common characteristic which does afford a natural and intrinsic element of distinction, she is relegated to the wholly untenable argument that other possible groups have not likewise been included. A statute is not objectionable merely because it does not include all cases which might theoretically be included within its scope with equal reason.

*Middleton v. Texas Power Co.*, 249 U. S. 152, 157, 158, 39 S. Ct. 227, 63 L. Ed. 527;

*Rosenthal v. New York*, 226 U. S. 260, 270, 271, 33 S. Ct. 27, 57 L. Ed. 212.

A state legislature is not bound to extend its regulation to all cases which it might possibly reach, but is free to recognize degrees of harm and confine its regulation to those classes where the need is determined to be the clear-

est. It may adjust its legislation according to the existing exigency.

*Price v. Illinois*, 238 U. S. 446, 35 S. Ct. 892, 59 L. Ed. 1400;

*West Coast Hotel Co. v. Parrish*, 300 U. S. 379, 57 S. Ct. 578, 81 L. Ed. 703.

In the *Parrish* case it is said:

"There is no 'doctrinaire requirement' that the legislation should be couched in all-embracing terms."

And in *Madden v. Kentucky*, 309 U. S. 83, 60 S. Ct. 406, 84 L. Ed. 590, it is held that:

"The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."

Even without fixation of such standards, we submit it is plain that the classification has a reasonable basis demonstrable from matters of common knowledge. As noted, petitioner concedes the existing classifications have a natural and intrinsic basis as involving minor employees requiring exceptional skill and talent. Southern California is known as the center of production of radio programs and motion pictures (which fields commonly employ many actors and actresses), while it is not necessarily a major source of infant musicians, scientists or inventors. Minor inventors and musicians are rarely employed on long-term contracts; while actors commonly are. Employment in motion pictures differs from all other callings in that the

services of an actress are indelibly recorded as rendered on film and in sound so that after production commences there can rarely be a substitution or replacement of an actress portraying a part therein. If such actress were privileged to repudiate her contract halfway through the picture, enormous loss would accrue to the employer, since the production would have to be started all over. Under such circumstances, a producer could not afford to employ a minor, to the detriment of the class. The statute here, since 1927, has, therefore, prohibited disaffirmance of such a contract by a minor.

An infant prodigy of the nature of a musician or an inventor would be employed as a prodigy already possessing inherent natural characteristics, and able to render valuable service, while a child actress is frequently selected because of her beauty or personality and is thereafter trained and publicized by her employer in the hope of developing latent talent or charm into a star personality acceptable to the public. The process is long and expensive, and the risk can be assumed only on the basis of a long term contract which is mutually enforceable. This is the history of petitioner herself, as alleged in the complaint [R. 8-9, para. XI]. No coercion or unfairness is possible, since the contract must be approved by a competent court after notice and hearing under the statute, and certainly no minor need accept such employment—or the large salaries paid. None of these elements apply to the general run of minors or to infant prodigies of other types.

The Supreme Court of the State of California in its opinion summarized the situation with precision when it said:

"It can hardly be questioned that there are reasonable grounds for the statutory provisions withdrawing the right of disaffirmance from minors with regard to contracts to render services in the professions specified in section 36, if such contracts are found reasonable by a court in a special proceeding for the examination thereof. Whether certain other groups of minors engaged in professions similar to those specified in section 36 should be included in the section is a matter of legislative discretion. New legislation such as this ordinarily first covers the fields where it is most urgently needed, and may be extended in the light of experience."

Even the dissenting opinion of Justice Shenk, though differing from the majority of the court as to the meaning and scope of the statute, concurred without question in the conclusion that the statute was constitutional.

In essence, petitioner has challenged the Legislature's classification not on the ground that she does not belong within the class, but on the ground that some others, who might have been included, have been omitted.

III.

**The Supreme Court of the State of California Has Not Applied or Attempted to Apply the 1947 Amendment of Section 36 of the Civil Code of California to the Contract Herein Involved and There Can Be No Absence of Due Process or Impairment of Contract in the Premises.**

Petitioner has attempted to present in her second and third questions (Pet. 2) and in her second and third points (Pet. Br. 22-33) the issues of due process and impairment of obligation of contract. She apparently does so because the Supreme Court of the State of California [R. 22] referred to the amendment of Section 36 of the Civil Code adopted by the California Legislature in 1947 and effective September 20, 1947. Petitioner is certainly in error, as is apparent from reading the opinion, in assuming that the Supreme Court of the State of California accepted the text of the 1947 amendment as controlling or as applicable as the law of the contract in this case.

The major dispute in the courts below concerned the meaning of the words contained in Section 36 of the Civil Code of California as it existed at the time the contract herein involved was entered into (1942), was approved by the Superior Court (1942), at the time of the attempted disaffirmance of her contract by the petitioner Brodel (1946), and at the time of the entry of the judgment of dismissal of the cause growing out of such attempted disaffirmance (1947). Consideration of the constitution-

ality of the statute could not be given until its meaning had been determined.

To determine the meaning the Supreme Court of the State of California in its opinion discussed the language and scope of the statute extensively [R. 16-22]. It reached its conclusion as to the meaning of the section as it then stood on the basis of logic, reason and prior authority. It then in one short paragraph referred to the 1947 amendment [R. 22], but the opening language of such paragraph of the opinion reads:

"We are here concerned with Section 36, as it read before the 1947 amendment."

Such reference to the amendment and its language is merely by way of additional assistance in determining the construction of the statute as it existed at all times herein relevant. It concluded that the earlier statute actually had the same intent, meaning and coverage as the Legislature stated in detail in the amendment, but there is nothing to indicate that the Supreme Court of the State of California thereby declared itself subservient to the Legislature in this respect. Even the petitioner concedes that a court may give weight to a legislative statement of the intent of a previous act (Pet. Br. 26). This the California court did do. It may have found such legislative statement persuasive, but there is absolutely nothing to indicate any control or coercion of judicial action.

Petitioner erroneously assumes that the 1947 amendment was substantively different from the prior statute and was retroactively applied in this cause. Her abstract

theories as to control of the courts and impairment of contract by retroactive legislation are entirely inappropriate. The Supreme Court of the State of California concluded that the earlier statute and the amendment had the same meaning, scope and effect. It reached this conclusion after extended analysis and not merely because of any statement by the Legislature in the amended statute. It reached its ultimate conclusion as a result of six pages of analysis of the relevant statute before even mentioning the amendment as a final and perhaps persuasive element.

The decision of the state court here as to the meaning and application of the statute is conclusive, and presents no issue.

*Morehead v. New York*, 298 U. S. 587, 56 S. Ct. 918, 80 L. Ed. 1347;

*Lindsley v. National Carbonic Gas Co.*, 220 U. S. 61, 31 S. Ct. 337, 55 L. Ed. 369.

It may be noted that throughout Point III of her brief petitioner refers to Section 36.2 of the Civil Code of California, which code section is actually one that concerns the jurisdiction of the Superior Court over savings plans and trusts established to protect the earnings or estates of minors gained or acquired in connection with personal service contracts. Section 36.2 is not even remotely connected with the present case and we must assume that reference to the statute by petitioner is a result of preoccupation with theory, or inadvertence.

IV.

**The Question Presented Is Not a Federal Question of Substance nor of General Public Importance.**

The statute in question was amended in 1947. The 1947 amendment and its validity has not been passed upon, and cannot be in issue in this present case.

The combination of circumstances giving rise to the controversy here, in view of the intervening amendment, is probably unique. The principles of law involved which govern the situation are not new. The specific, and now replaced, statute, so far as here relevant, covers a situation which is not duplicated, we believe, in any other state and is probably unique to Southern California, in view of the fact that a tremendous portion of the motion pictures produced for public consumption are there produced. There is no dispute or conflict as to the basic principles involved.

**Conclusion.**

It is respectfully submitted that the petition for certiorari should be denied.

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